

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SERVILLANO MA. MODESTO, DEFENDANT-APPELLANT.***G.R. No. L-25484. September 21, 1968*

Ponente: SANCHEZ, J.

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For the death of Melencio Modesto—which occurred between the evening of March 8 and the morning of March 9, 1963 in Hinunangan, Southern Leyte—two separate charges were lodged in court: parricide against his parents Servillano Modesto and Gerarda Modesto;^[1] and murder against his uncles Potenciano Modesto and Constancio Modesto.^[2] Conspiracy of the four was alleged in both cases.

After joint trial, the Southern Leyte court acquitted Gerarda Modesto, Potenciano Modesto, and Constancio Modesto but convicted—upon circumstantial evidence—the dead man's father, Servillano Modesto, a provincial sanitary inspector, of the crime of parricide, sentenced him to reclusion perpetua with accessories of the law, to pay civil indemnity in the sum of P6,000.00 and one-half of the costs.

Defendant on appeal asks us to overturn that conviction. The Solicitor General, on behalf of the People, joins defendant's plea for acquittal. Appellant and appellee both tell this Court that the circumstantial evidence is riddled with doubts of serious magnitude and is far too skimpy to back a conviction.

Out of the entire record, we cull the following facts:

At about 5:00 p.m. on March 8, 1963, Melencio Modesto, 28 years of age, was visiting at the residence of Hinunangan municipal secretary Jorge Merkita, situated just across the Modestos' own abode at Catmonan Street. The object of that visit was Teresita Dugos, Merkita's housemaid, on whom Melencio was pouring his amorous attention. Melencio was then tipsy. He smelled of tuba and was talkative. He was a habitual drinker.

After supper, which Melencio took at Merkita's house, Teresita asked permission to go to the boy scouts camp at the town plaza. Melencio then requested Merkita that he (Melencio) be allowed to accompany Teresita. Merkita acceded but instructed his houseboy, Alberto Serafio, to accompany the two as Melencio was not behaving properly. So the three went. At the plaza, Melencio was disturbing the boy scouts doing the tinikling. He had to be pacified by Patrolman Graciano Cajotoc, Melencio's first cousin, who told him to go home.

After a while, Melencio and Serano went back to Merkita's house, but without Teresita. They complained to Merkita that they had lost track of her. They left again.

Teresita later arrived, accompanied by three teenagers. The three did not go up, stayed in the street. Then, Melencio and Serano returned. When Melencio learned that Teresita came home with the three teenagers then still in the street, he went down and banged shut the front door of Merkita's house. To avoid any untoward incident, Merkita directed Serafio to inform the teenagers that he (Merkita) was the one who pushed the door.

As the night was dark (Hinunangan's electric plant was not functioning for some time), Melencio asked Serano to

accompany him home. According to Serano, he and Melencio separated at the caimito tree in Merkita's yard but he watched Melencio until the latter reached the pergola leading to the Modestos' kitchen.

In the morning of the next day, Saturday, March 9, word spread around that Melencio was dead. Many people converged at the Modesto home where Melencio was lying in state.

At around 1:00 p.m., the body was taken out of the house for picture taking. At about 2:30 p.m. that same day of March 9, the body of Melencio was taken to a Protestant church for funeral rites. Immediately afterwards that same afternoon, it was buried at the Aglipayan cemetery.

Graciano Cajotoc, a policeman at the time and whose mother was the sister of the accused Gerarda Modesto, was the prosecution's principal witness. His testimony in court may be briefly described as follows:

Around 7:00 a.m. on March 9, Santos Modesto, a brother of Melencio, went to Cajotoc's house and informed the latter of Melencio's death. Thereupon, Cajotoc proceeded to the house of Servillano Modesto. There were many people in the sala. He went to the room where Melencio's body was. The door was open, but covered with a curtain. The body was lying on a bed under a blanket. Cajotoc asked Servillano to uncover the body so that the people could see. Servillano complied by placing a candongga (transparent fabric) over the body's face. Cajotoc observed the floor of the room to be whitish, different from the floor of the sala, which was shiny from wax. After about twenty minutes, he left the room but stayed around. He inquired from Servillano the cause of Melencio's death. The answer was angot (as interpreted below, cardiac failure, or the local version of bangungot due to excessive drinking.

At around 11:00 a.m., he entered Melencio's room again and sat near his body. Suspicious of the cause of death, he wanted to feel the body but Servillano told him not to touch it as the children might be frightened. He went out of the room but, after a few minutes, returned. Finding that he was alone, he raised the blanket covering the body, unbuttoned the trubenized shirt and lifted the T-shirt underneath. He saw bandage and plaster, took them off, found a wound well sutured below the right nipple. He placed the bandage and plaster back. He peeled off another bandage and plaster on the left side of the breast, saw another wound. He returned the bandage and plaster, lowered the T-shirt, buttoned the trubenized shirt and covered the body again with the blanket.

He left the room, but talked to no one about his findings. He stayed with the funeral party until the burial in the afternoon.

Prosecution witness Perfecto S. Ando, clerk in the municipal treasurer's office, testified that on Monday, March 11, he issued a burial permit to Servillano who told him that the cause of Melencio's death was cardiac failure. On the 14th, Servillano came back and asked him to change the cause of death to murder. He replied that it could not be done.

According to the acting chief of police, Ciriaco Donayre, another prosecution witness, in the evening of March 10 he received the first verbal report on Melencio's "mysterious" death from Graciano Cajotoc. The police blotter records on March 10 Cajotoc's report that "there was a wound below the left nipple." Donayre then investigated. An exhumation was ordered.

Dr. Buenaventurado Jostol, municipal health officer of Anahawan, Southern Leyte, testifying for the prosecution, affirmed that he conducted the exhumation of Melencio's body on March 16. He found on Melencio's chest two stab wounds which were nicely sutured. They were caused by two kinds of sharp-bladed instruments. The stab wound on the left part of the body was, in his opinion, fatal because it punctured the ventricles of the heart. The sutures, he declared, must have been done by trained hands.

- All quarters concede that the case for the People was built-entirely on circumstantial evidence.

Circumstantial evidence has been defined as that which "goes to prove a fact or series of facts other than the facts in issue, which, if proved, may tend by inference to establish a fact in issue." [3]

A rule of ancient respectability now molded into tradition is that circumstantial evidence suffices to convict only if the following requisites concur: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. [4]

The standard postulated by this Court in the appreciation of circumstantial evidence is well set out in the following passage from *People vs. Ludday*: [5] "No general rule can be laid down as to the quantity of circumstantial evidence which in any case will suffice. All the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt." [6]

It has been said, and we believe correctly, that the circumstances proved should constitute an unbroken chain which leads to one fair and reasonable conclusion which points to the accused, to the exclusion of all others, as the guilty person. [7] From all the circumstances, there should be a combination of evidence which in the ordinary and natural course of things, leaves no room for reasonable doubt as to his guilt. [8] Stated in another way, where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with innocence and the other with guilt, the evidence does not fulfill the test of moral certainty and is not sufficient to convict the accused. [9]

- Did the People discharge the heavy burden of proof beyond reasonable doubt?

The trial court, in convicting Servillano Modesto, made the following observations:

"It is obvious from the foregoing that Melencio Modesto was healthy and well when he went home on the night of March 8, 1963; that Servillano Modesto said that Melencio died of 'ongot' or 'bangongot' or heart failure; that the floor of his room was whitish in contrast to the shiny and waxed floor of the other portion of the house; that he was stabbed twice in his room, both below his left and right nipples, the left wound of which was fatal as it penetrated the left ventricle of his heart; that the wounds were well sutured and bandaged; that in the house, only Servillano Modesto knows how to properly suture and bandage wounds as testified by his superiors, namely, Dr. Jostol, Dr. Bustamante and Dr. Jose Mercado, Jr.; that the two sutured and bandaged wounds were hidden from the sight of the people by means of T-shirt, trubenized shirt and blanket; that Servillano Modesto did not allow anybody to enter the room of the deceased, Melencio, with the exception of his cousin, Graciano Cajotoc, who was not allowed by Servillano Modesto to touch the body of Melencio for fear that it might frighten the children; that Melencio was buried at 2:00 P.M. of March 9, 1963; that Servillano Modesto on March 11, 1963 reported to clerk Ando of the Local Civil Registrar that the cause of death was cardiac failure for which a burial permit was issued to Servillano Modesto who paid the same; that on March 10, 1963, patrolman Graciano Cajotoc reported to the Chief of Police that Melencio Modesto died of wounds which was recorded in the police blotter; that on March 11, 1963 Graciano Cajotoc confirmed his statement by means of an affidavit; that on March 12, 1963 this fact was reported to Sgt. Igbuhay of the P.C.; that on March 14, 1963, Servillano Modesto went to clerk Ando to request that the cause of death be changed from cardiac failure to murder which request was denied; that on March 14, 1963 Mayor Tagnipe wired Provincial Health Officer Mercado that the body of Melencio Modesto be exhumed as he died of wounds; that on March 15, 1963, Servillano Modesto delivered to patrolman Verzosa a death certificate of Melencio Modesto dated March 9, 1963, wherein the two aforesaid wounds were [stated to be] found to be well sutured, plastered and

bandaged as aforesaid".[10]

As we evaluate the foregoing circumstances canvassed by the trial judge, we find ourselves in no position to justify a finding of guilt beyond reasonable doubt.

First. There is no doubt that the death of Melencio Modesto was due to stab wounds. How they were inflicted, where they were inflicted, when they were inflicted, and who inflicted them, the record does not directly disclose. Where are the two bladed instruments used in the commission of the crime? And where are the tell-tale garments? The record is as silent. The trial court's decision was plainly anchored on circumstantial evidence, carved out principally from the testimony of Graciano Cajotoc, which, as we shall discuss, suffers from the bogholes of improbability.

Second. The given facts that envelop this case open up a number of possibilities as to who killed Melencio Modesto. He may have been stabbed by the three teenagers that were in the street that night; or by Alberto Serano, the houseboy, or Graciano Cajotoc who was with the deceased on their way to Melencio's house in the night of March 8, each with the help of someone else; or by Potenciano and Constancio, Servillano's brothers, said to be in Servillano's house on March 6, 7, and 8; or by other persons among whom are the accused and members of his family.

Third. The trial court found "that Servillano Modesto said that Melencio died of 'ongot' or 'bangpngot' or heart failure"; and that on March 11, Servillano "reported to clerk Ando of the Local Civil Registrar that the cause of death was cardiac failure for which a burial permit was issued." These circumstances were testified to by Graciano Cajotoc and Perfecto Ando. But there is the testimony of policeman Dionisio Verzosa, a defense witness, to this effect: On March 9, 1963, a Saturday, when the municipal offices were closed, he was alone in the police department when Servillano came to deliver to him copies of Melencio's death certificate signed by Servillano as sanitary inspector in which was stated that his son, the deceased Melencio, suffered two wounds and that murder was the cause of death. One copy (Exh. 10) was signed by Verzosa as evidence of receipt (Tr., pp. 371-372, 377-378). He gave it to chief of police Donayre the following day (Tr., p. 373).

It is thus not altogether clear that Servillano at first attributed Melencio's death to ungot. But supposing that he did and that he changes his mind later on, Servillano cannot be placed in a bad light. For, it does not exclude a number of possibilities. He could really have hidden at first the true cause of death. This could tie up with the speedy burial of Melencio. And yet, they do not necessarily pin the guilt on him. Imponderables there are: fear, the desire to conceal the true culprits given the fact that the two wounds were inflicted by two bladed weapons, according to the medical findings.

Fourth. The trial court observed "that the floor of his [Melencio's] room was whitish in contrast to the shiny and waxed floor of the other portion of the house." This must be the reason why the trial court continued to say that Melencio was "stabbed twice in his room." And this, because we find no other factual prop for this conclusion in the record.

Sole basis for the "whitish floor" finding is Graciano Cajotoc's dubious testimony. Even so, the deduction that Melencio was stabbed in his room is a non-sequitur. He could have been stabbed elsewhere and brought to his room. Blood could have dripped on the floor which could later have been scrubbed clean. We still find ourselves nowhere. And then again, assuming Melencio were actually stabbed in his room, can that fact point to Servillano as the wrongdoer? Nothing in the record suggests that only Melencio's father had access to that room.

Fifth. Another court finding is that "in the house, only Servillano Modesto knows how to properly suture and bandage wounds." Great probability exists that this is incorrect. Cajotoc himself confirmed that Consorcia, the

eldest daughter of Servillano, was a nurse (Tr., p. 57) who should know how to suture and bandage wounds also. Besides, the assumption that Servillano did suture and bandage Melencio's wounds cannot transport us to the conclusion that Servillano killed his son. If he did, would he still be interested in suturing and bandaging those wounds?

Sixth. But we do not stop here. An examination of the record tells us that the testimony of the star witness, Graciano Cajotoc—who claims not to know the name of his own mother—merits no credence.

Cajotoc first executed an affidavit dated March 12, 1963 (Exhs. A and A-1). There, he declared that he sat by the side of Melencio's body, happened to lift the covers thereon, saw blood and one wound on the left breast. The police blotter (Exh. I, p. 62) of March 10 coincides with this particular. Entered therein was the statement that Cajotoc found "a wound below the left nipple of Melencio Modesto."

On July 10, 1963—after the exhumation of the body—Cajotoc made another verified statement taken by chief of police Donayre. This time, however, his version is that he found two wounds instead of one.

Then, we are confronted with a third affidavit of Cajotoc made on November 19, 1963, still previous to his court testimony on February 18, 1964. That November 19 affidavit explained that he "just presumed that maybe he [Melencio] was killed by his own parents because he was living with them"; that he initiated the charges "without any evidence to support my conclusion but with the hope that when the defendants are already detained some people might be ready to testify if they know anything about that death"; that "many of us in Hinunangan knew him [Melencio] to be very fond of drinking liquor and when he is drunk, very fond of challenging people to quarrel with his bolo, and therefore it is also possible as many people believe that he might have been stabbed by somebody in the street before he went home"; that "I also saw him drunk in that evening at 9:00 p.m., March 8, 1963"; and that "my conscience has been very badly troubled with guilt for testifying on something without any evidence to support me" to the prejudice of the four defendants. He thus indicated in the same affidavit his request to allow him to withdraw as a prosecution witness. But as it turned out, he still testified.

Asked in court why he executed that affidavit of November 19, he said that he did so because his aunt, Gerarda Modesto, was innocent (Tr., pp. 94, 98-99).

Mute but formidable is the police blotter. It belies Cajotoc's continued presence at or around the Modesto home from 7:00 a.m. to the afternoon of March 9. For, that blotter recites that Cajotoc was in his office from 9 to 12 a.m. on March 9 (Exh. 3 on p. 61 of Exh. I). Chief Donayre confirmed in court the presence of Cajotoc in his office during the time just mentioned (Tr., pp. 228-229).

All this makes it hard to give full faith and credit to Cajotoc's testimony in court.

Finally. Rare and unusual, indeed, is it for a father to liquidate his own flesh and blood. It is contrary to the ordinary and natural course of things. For a man to kill his own son, there must be some insuperable force that drives him to do such a dastardly act. That factor is missing in this case. In fact, no motive has even been intimated by the prosecution. We are thus ushered to the precept that "though proof of motive is not indispensable to conviction, yet a void in the evidence in this respect discloses a weakness in the case for the prosecution." [11]

From all that has been said, it is difficult to come to a conclusion of guilt. Taken singly, the pertinent circumstances relied upon by the trial court to support conviction—some of which to our mind are not even proved—do not in any way warrant the inference that Servillano did away with his son. Taken collectively, they do not weave a discernible factual pattern consistent with the guilt of the accused and inconsistent with his innocence.

Servillano Modesto deserves an acquittal, for failure of proof beyond reasonable doubt.

Viewed in the light of the entire record, the trial court's conviction of Servillano Modesto is hereby reversed and he is hereby acquitted of the crime of parricide, with costs de oficio.

SO ORDERED.

Conception, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Angeles, Fernando and Capistrano, JJ., concur.

Judgment reversed.

[1] Criminal Case R-2274, Court of First Instance of Southern Leyte (Maasin), entitled "People of the Philippines, Plaintiff, versus Servillano Ma. Modesto alias Sivil & Gerarda B. Modesto alias Gera, Accused."

[2] Criminal Case R-2275, Court of First Instance of Southern Leyte (Maasin), entitled "People of the Philippines, Plaintiff, versus Potenciano Ma. Modesto alias Poten & Constancio Ma. Modesto alias Konos, Accused."

[3] Salonga, Philippine Law on Evidence, 1964 ed', p. 786, citing Tracy, 313.

[4] Section 5, Rule 133, Rules of Court; formerly Section 98, Rule 123, 1964 Rules of Court.

[5] 61 Phil. 216, 221-222, quoting 12 Cyc, 488.

[6] See also: Pareja vs. Gomez, L-18733, July 31, 1962.

[7] U.S. vs. Villos, 6 Phil. 510, 512; People vs. Subano, 73 Phil. 692-693; Salonga, op. cit., p. 791; 6 Moran, Comments on the Rules of Court, 1963 ed., p. 162; 4 Martin, Rules of Court in the Philippines, 1966 ed., p. 601.

[8] U.S. vs. Villos, supra; U.S. vs. Lim Sip, 10 Phil. 627, 629; People vs. Tanchoco, 76 Phil. 463, 467. See cases cited in 6 Moran, p. 163, at footnote 129.

[9] People vs. Pacana, 47 Phil. 48, 57, citing U.S. vs. Maaflo, 2 Phil. 718; People vs. Abana, 76 Phil. 1, 4-5. See Salonga, op. cit., p. 792; 6 Moran, p. 163.

[10] Record below, pp. 118-119.

[11] People vs. Hajan, 50 Phil. 545, 547. See also: People vs. Dalmani, 63 Phil. 188, 195; People vs. Taneo, 58 Phil. 255, 256-257; People vs. Zamora, 59 Phil. 568, 569; People vs. Cunanan, L-17599, April 24, 1967.

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